

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No.: EB-00-PO-038
Oregon Pacific Railroad Company)	
Milwaukie, OR)	NAL/Acct. No. X3292001
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 7, 2001

Released: February 9, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“Order”), we deny the Oregon Pacific Railroad Company’s (“Oregon Pacific”) petition for reconsideration¹ and affirm the *Forfeiture Order*² issued against Oregon Pacific for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“the Act”).³ The noted violations involve Oregon Pacific’s operation of a two-way radio station without Commission authorization.

2. On June 13, 2000, the Portland, Oregon, Resident Agent Office (“Portland Office”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of ten thousand dollars (\$10,000) to Oregon Pacific.⁴ Oregon Pacific did not respond to the NAL. On October 10, 2000, the Enforcement Bureau (“Bureau”) released a *Forfeiture Order* affirming the forfeiture. Based on the information before us, we affirm the assessment of a monetary forfeiture in this matter.

II. BACKGROUND

3. On April 3 and 4, 2000, the Portland Office received complaints from the Veterans Administration Police (“VA”) about interference to its communications on frequency 164.1 MHz. The VA reported that the interference occurred whenever a signal was on frequency 161.19 MHz. On April 3, 2000, an agent at the Portland Office determined that Oregon Pacific had filed an application to operate a station on 161.19 MHz.⁵

¹ Oregon Pacific filed a statement in response to the *Forfeiture Order*. Because there is no provision for responses to Forfeiture Orders, we are treating Oregon Pacific’s filing as a petition for reconsideration of the *Forfeiture Order*.

² *Forfeiture Order*, 15 FCC Rcd 12699 (Enf. Bur. 2000).

³ 47 U.S.C. § 301.

⁴ Notice of Apparent Liability for Forfeiture, NAL Acct. No. X3292001 (Enf. Bur., Portland Resident Agent Office, released June 13, 2000).

⁵ Section 90.159 of the Rules, 47 C.F.R. § 90.159, conditionally authorizes Part 90 applicants who meet certain conditions to operate stations while their applications are pending.

4. On April 4, 2000, agents from the Portland Office inspected Oregon Pacific's radio installation and determined that it was transmitting a spurious emission on the frequency 164.1 MHz which was causing the interference to the VA's communications. On April 5, 2000, an agent at the Portland Office informed Oregon Pacific by telephone that the interference was continuing and Oregon Pacific agreed to shut its station down.

5. On April 6, 2000, the Portland Office issued an Official Notice of Violation ("NOV") to Oregon Pacific for transmitting spurious emissions, in violation of Section 90.21(c)(3) of the Commission's Rules, and for failure to identify the station in accordance with Section 90.159(c) of the Rules. In its response to the NOV, Oregon Pacific reported that it had eliminated the cause of the spurious emissions and that the interference had ceased.

6. On April 28, 2000, an agent at the Portland Office learned that, because of the automatic dismissal of Oregon Pacific's application (for failure to resubmit the application following its return for additional information), Oregon Pacific's authority to operate a radio station had terminated. On May 1, 2000, the Portland Office issued and mailed an Unlicensed Warning Letter to Oregon Pacific for operating a station without authorization, in violation of Section 301 of the Act.

7. On May 31, 2000, agents from the Portland Office observed transmissions on 161.19 MHz and electronically pinpointed Oregon Pacific's radio installation in Milwaukie, Oregon, as the source of those transmissions. Immediately after their monitoring observations, the agents inspected Oregon Pacific's radio installation. During the inspection the agents spoke to Dick Samuels, the owner and general manager of Oregon Pacific. At the conclusion of the inspection, an agent issued an Unlicensed Warning Letter. After returning to the Portland Office on May 31, 2000, and again on June 1, 2000, an agent monitored communications on 161.19 MHz and recognized the voice of the operator to be that of Dick Samuels.

8. Following Oregon Pacific's failure to respond to the NAL, the Bureau released a *Forfeiture Order* on October 10, 2000, in the amount of \$10,000. In its petition for reconsideration of the *Forfeiture Order*, Oregon Pacific stated that it submitted an application for license renewal and believed it was authorized to operate its station during the pendency of that application. Oregon Pacific contended that "Since the delay in issuing the license is a result of the FCC's inability to process [applications] in a timely manner [Oregon Pacific] should not be held responsible for any fines." In addition, Oregon Pacific argued that its operation on May 31, 2000, should not be considered a violation of the Act because "On May 31, 2000, Mr. Lafontaine again visited our station and we agreed to discontinue using the station until the licensing situation was resolved once the two trains which [were] on the road completed their runs." Oregon Pacific also asserted that its operation on June 1, 2000, was not in violation of Section 301 of the Act because on that date (and thereafter), Oregon Pacific was temporarily authorized to use a station licensed to the Union Pacific Railroad ("Union Pacific").

III. DISCUSSION

9. Oregon Pacific's unlicensed operation cannot be blamed on "the FCC's inability to process [applications] in a timely manner." Oregon Pacific's unlicensed operation resulted from its own failure to resubmit its application within 60 days after the return of that application for additional information⁶ and from its subsequent failure to cease operation when its operating authority terminated and FCC staff repeatedly warned it regarding unlawful operation.

⁶ Oregon Pacific asserts that its agent, the Association of American Railroads, handled the filing of its application. Oregon Pacific is fully responsible for the actions or inaction of its agent.

10. Oregon Pacific is responsible for the unlicensed operation observed on May 31, 2000. Agent Lafontaine did not give Oregon Pacific permission to operate a station on May 31, 2000, until “the trains . . . on the road completed their runs.” Although Oregon Pacific may have obtained permission to use a station licensed to Union Pacific, the transmissions observed on June 1, 2000, were on 161.19 MHz -- not on the frequency assigned to Union Pacific -- and were, thus, unauthorized.

11. We can find no basis for remission or mitigation of the forfeiture and, therefore, affirm the \$10,000 forfeiture assessed by the *Forfeiture Order*.

IV. ORDERING CLAUSES

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules⁷ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁸ Payment may be made by mailing a check or similar instrument, payable to the order of the “Federal Communications Commission,” to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note “NAL/Acct. No. X3292001” referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁹

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail -- Return Receipt Requested, to Oregon Pacific Railroad Company, P.O. Box 22548, Portland, Oregon 97269.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁷ 47 C.F.R. § 1.80.

⁸ 47 U.S.C. § 504(a).

⁹ See 47 C.F.R. § 1.1914.